

FILED 10/24/2022

AT 11:40 O'Clock A M
CLERK OF DISTRICT COURT

[Signature]
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, DEPARTMENT OF LANDS,)
)
) *Plaintiff,*)

vs.)

JAMES MOSHER, an individual; JAMES MOSHER LIVING TRUST,)
)
) *Defendants.*)

JAMES MOSHER,)
) *Third-party Plaintiff,*)

vs.)

STEAMBOAT BAY ADDITION, INC., an Idaho non-profit corporation; and MARLENE J. SMICK, Trustee of the Smick Family Revocable Trust dated September 12, 2019,)
) *Third-party Defendants.*)

Case No. **CV28-22-2675**

MEMORANDUM DECISION AND ORDER GRANTING PLAINTIFF'S MOTION TO STRIKE THIRD-PARTY COMPLAINT AND SEVERING THE THIRD-PARTY COMPLAINT

This matter is before the Court on a motion to strike third-party complaint, brought by plaintiff, State of Idaho, Department of Lands (State), against defendant, James Mosher, as an Individual, and James Mosher Living Trust (Mosher). After State brought this case against Mosher, Mosher filed a First Amended Answer and Third-Party Complaint against Steamboat Bay, Inc. (Steamboat Bay) and Marlene Smick (Smick), claiming that the two Third-Party Defendants have breached the terms of their Settlement Agreement with Mosher notwithstanding having fully released any and all claim of any kind or nature related thereto; and with that breach, have breached the implied covenant of good faith and fair dealing. Third-Party Compl., 18 ¶ 25, 19 ¶ 29.

Steamboat Bay and Smick claim:

That is, it is alleged that Third Party Defendant and Mosher entered into Mediation Agreement in the matter of *Steamboat v. Mosher v. Steamboat*, CV 28-19-6230, which pertained, in part, to the Mosher dock which is the subject of the instant matter by IDL. Then, Mosher alleges that day later, on September 14 and 15, 2021, Third Party Defendant Smick sent IDL complaints regarding the Mosher dock. See Third Party Complaint, at p. 17, paragraphs 17 and 18. From this, Mosher alleges that IDL initiated the instant action against Mosher due, in part, to the aforementioned “complaints” by Smick. As such, Mosher ... claims that Third Party Defendants breached the Mediation Agreement.

Third Party Def.’s Joinder in Pl’s Mot. to Strike Third-Party Compl. at 2.

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

On August 10, 2017, defendant/third-party plaintiff Mosher purchased the property at 7377 W. Camas Court in Coeur d’Alene¹, which included the home and a dock on Lake Coeur d’Alene, from the daughters of James and Elizabeth Barber (Barbers), who had inherited the property upon their parent’s passing. Decl. of James Mosher (Mosher Decl.) 2, ¶¶ 2, 3, 4.

At the time of purchase, Mosher states the dock: “had previously been damaged through wind, water, or winter conditions in that it was unstable, uneven (and nearing submersion in some parts), and posed a safety hazard. This was true as to the docks, the float logs, the pilings, and the decking. Two pilings had been damaged and broken...” Mosher Decl. 2, ¶¶ 6. Mem. In Opp’n to Mot. To Strike 2-3, ¶¶ 6.

According to Third-Party Defendant, Steamboat Bay, Inc. the “[t]he dock was approximately 1,008 square feet, or approximately 308 square feet in excess of what is currently allowed by IDL standards.” *Mem. in Opp’n to Mot. to Strike*. 2, ¶¶ 4. (citing Magnuson Decl., Ex. B). The Barbers installed the adjacent dock prior to 1975, before

¹ This property is located in Steamboat Bay, and Third-Party Defendant, Steamboat Bay Addition, Inc. is the homeowners association of this neighborhood. *Memo. in Opp’n to Mot. to Strike Third-Party Compl.* (“Memo. In

Idaho had adopted a Lake Protection Act, therefore there is not an encroachment permit. Mosher Decl. 2, ¶ 3, 4. Mem. in Opp'n to Mot. to Strike. 2, ¶ 3.

At some point between January 25, 2018 and May 2, 2018, Mosher replaced his dock. See Memo. In Opp. to Mot. To Strike, 4, ¶ 12, 13. Mosher claims that he repaired the dock, by “reinstalling the deck (defined as a repair); reinstalling damaged float logs (defined as a repair); reinstalling damaged pilings (defined as a repair); and reinstalling winter, wind, and water damaged docks (defined as a repair).” *Id.* at 4, ¶ 12.

On August 29, 2019, Mosher’s neighbors and Steamboat Bay filed a lawsuit against Mosher, Kootenai Country Case No. CV28-19-6230, alleging, that Mosher had improperly placed sand on his beach improperly replaced his dock. First Am. Answer and Third-Party Compl. 15, ¶ 9. Specifically mentioned by Mosher, those allegations included:

44. Mosher's development of the Lake Lot also includes the development of Lake Lot's shoreline and the redevelopment and replacement of a residential dock moored to the shore of the Lake Lot.

45. Masher's development of the Lake Lot shoreline has caused erosive and migratory (e.g., migrating construction sand) issues impacting and damaging the [Steamboat Bay] Community Lot, the dock moored to the Community Lot, and the riparian rights associated with the Community Lot. 46. Mosher's redevelopment and replacement of the residential dock moored to the Lake Lot has interfered with riparian rights of Plaintiffs and has further unlawfully impacted the line of historical line [sic] of navigability associated with the Community Lot.

Id. 15-16, ¶ 13. On September 14, 2021, a successful mediation occurred in that case, and a signed Mediation Settlement Agreement was signed by all parties. *Id.* 16-17, ¶ 16. (See a redacted version of Mediation Settlement Agreement with *Aff. Of Michael Haman, filed in Supp. of Third Party Def.'s Joinder in Pl.'s Mot. To Strike Third Party Compl.* (“Harman Aff.”) ¶ 2, Ex A.).

Opp'n to Mot. To Strike”) ¶ 5.

Mosher alleges that as early as the same day that the Settlement Agreement was signed, “Smick, as President of Steamboat Bay, lodged another complaint with IDL about Mosher's pre-LPA dock.” First Am. Answer and Third-Party Compl. 17, ¶ 17. Smick and Steamboat Bay claim that the “Mediated Settlement Agreement did not pertain to Mosher's dock. It pertained to, among other things, Mosher's agreement to disclaim any right in any boat dock that was associated with the Steamboat Community Lot.” Third Party Def.'s Joinder in Pl.'s Mot. To Strike Third-Party Compl. At 3.

Mosher alleges, “On November 15, 2021, in Kootenai County District Court, the Honorable Cynthia K.C. Meyer, District Judge, entered an Order of Dismissal which, ‘based upon the parties’ stipulation,’ dismissed ‘any and all claims and counterclaims which were asserted or which could have been asserted’ in Kootenai County Case No. CV28-19-6230 with prejudice.” First Am. Answer and Third-Party Compl. 17, ¶ 20.

Approximately six months later, the State claims:

On May 9, 2022, the State filed a complaint for injunctive relief seeking a mandatory injunction against [“Mosher”] ordering removal of the dock, as it claims it is an unauthorized navigational encroachment in Coeur d’Alene Lake. In summary, the State alleges that Mosher replaced his dock with an entirely new structure that is significantly larger than allowed by the Lake Protection Act, and without following the proper permitting process. In addition, the State claims that Mosher failed to comply with a notice of non-compliance and a cease-and-desist letter from the Idaho Department of Lands.

Mem. In Supp. of Mot. to Strike Third-Party Compl. at 2-3.

On July 21, 2022, Mosher filed an Answer to the Complaint. On July 27, 2022, Mosher filed a First Amended Answer and Third-Party Complaint, “asserting claims against non-parties Steamboat Bay Addition, Inc, and Marlene Smick as trustee of the Smick Family Revocable Trust including breach of contract and breach of covenant of good faith and fair dealing.” *Id.*

On August 8, 2022, the State filed a Motion to Strike Third-Party Complaint, and a Memorandum in Support of Motion to Strike Defendant's Third-Party Complaint. On September 20, 2022, Third-Party Defendants Smick and Steamboat Bay filed a Motion to Join the Plaintiff's Motion to Strike.

On October 12, 2022, Mosher filed a Memorandum in Opposition to Motion to Strike Third-Party Complaint. Oral argument was held on October 19, 2022. At the conclusion of that argument, the Court announced that it was granting the State's Motion to Strike Third-Party Complaint, and additionally that the Court was severing Mosher's Third-Party claims against Steamboat Bay and Smick. The Court also indicated that it would issue a written decision explaining the basis for those decisions.

II. STANDARD OF REVIEW

Idaho Rule of Civil Procedure 14, Third Party Practice, states:

(a) When a Defending Party May Bring in a Third Party.

(1) *Timing of the Summons and Complaint.* A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint more than 14 days after serving its original answer.

.....
(4) *Motion to Strike, Sever, or Try Separately.* Any party may move to strike the third-party claim, to sever it, or to try it separately.

(5) *Third-Party Defendant's Claim Against a Nonparty.* A third-party defendant may proceed under this rule against a nonparty who is or may be liable to the third-party defendant for all or part of any claim against it.

.....

I.R.C.P. 14.

"Under I.R.C.P. 14(a), similar to the federal rule, it is discretionary with the district

court whether to allow the third-party complaint to be filed.” *Harris v. Rasmussen*, 106 Idaho 322, 324, 678 P.2d 114, 116 (Ct. App. 1984). A trial court’s decision to allow or deny a defendant to file a third-party complaint is reviewed under an abuse of discretion standard. *Idaho Sch. for Equal Educ. Opportunity v. State*, 132 Idaho 559, 567, 976 P.2d 913, 921 (1998). This Court is certainly familiar with the standard of review for discretionary acts by a judge. In *Lunneborg v. My Fun Life*, 163 Idaho 856, 421 P.3d 187 (2018), the Idaho Supreme Court made clear that it was “requiring trial courts to do .. four things...in exercising their discretion.” 163 Idaho at 864, 421 P.3d at 195. Those four things are: 1) the trial court correctly perceived the issue as one of discretion, 2) acted within the outer boundaries of his or her discretion, 3) acted consistently with the legal standards applicable to the choices available to it, and 4) reached its decision by the exercise of reason. 163 Idaho at 863-64, 421 P.3d at 194-95.

III. ANALYSIS.

Both State and Third-Party Defendants Smick and Steamboat Bay move this Court to Strike Mosher’s Third-Party Complaint, alleging that it is in violation of Idaho Rule of Civil Procedure 14.

A. No Need for Mosher to Seek Leave of the Court.

As a preliminary matter, the State argues that one reason Mosher’s third-party complaint is invalid because Mosher failed to seek leave of the Court to file the third-party complaint. See Mem. in Supp. of Mot. to Strike at 5. Mosher filed his original answer on July 21, 2022, and a First Amended Answer and Third-Party Complaint, asserting claims of breach of contract and breach of covenant of good faith and fair dealing against Steamboat Bay and Smick, on July 27, 2022. Idaho Rule of Civil Procedure 14(a) states “[T]he third-party plaintiff must, by motion, obtain the court’s

leave if it files the third-party complaint more than 14 days after serving its original answer.” I.R.C.P. 14(a). As Mosher’s Third-Party Complaint was filed within 14 days of Mosher’s original answer, it was not necessary for Mosher to file a motion to obtain court’s leave before filing the third-party complaint.

B. Mosher’s Third-Party Complaint Does Not Satisfy the Requirements of Idaho Rule of Civil Procedure 14, as the Third-Party Defendant’s cannot be liable for the State’s claims against Mosher.

The State argues that the Third-Party Complaint filed by Mosher fails to “allege any action by Steamboat Bay or Smick that would cause either to be liable for any of the State’s claims against Mosher. As a result, Mosher’s third-party complaint does not seek to transfer any liability asserted, and thus fails to satisfy the requirements of I.R.C.P. 14(a).” Mem. in Supp. of Mot. to Strike. at 3-4. The State claims that Mosher did not and cannot present any facts that would show that the Third-Party Defendants are, “liable to Mosher for any, or part of the State’s claim that his dock is not in compliance under the rules of the Lake Protection Act. Nor can Mosher transfer liability to his neighbors for failing to comply with his notice of non-compliance or cease-and-desist.” *Id.* at 5. In detail, the State argues:

The basis of Mosher’s deficient third-party complaint appears to stem from allegations that he violated rules of his HOA, prompting them to seek enforcement through legal action—a common theme. The unrelated civil action in Kootenai County case No. CV28-19-6230 was dismissed after the parties reached a mutual agreement, the details of which are irrelevant to this matter. Regardless of any claim against Mosher made by his community and neighbors, the State of Idaho and IDL, acting on behalf of the State Board of Land Commissioners, are authorized to enforce violations of the Lake Protection Act. There could be no settlement between Mosher and his neighbors regarding this issue because there could be no claim against him by his neighbors or HOA for enforcement of the Lake Protection Act with respect to Mosher’s dock. All claims between Mosher and his HOA appear to be related to community rules about landscaping, easements, and common area use, all of which are above the high-water mark and outside of the Lake Protection Act and the jurisdiction of the Idaho Department of Lands.

Further, the State has not made any claim that Mosher is currently in violation of the Lake Protection Act through landscaping or sand placement below the high-water mark. No such count is alleged in the State's complaint, and sand is not an issue in this action. Mosher's newly installed, non-compliant dock that was placed in Coeur d'Alene Lake without authorization or permit pursuant to the LPA is the only issue before the Court. The State, through the Idaho Department of Lands is the only entity statutorily charged with the Act's enforcement.

Id. at 4.

In response, Mosher argues:

Steamboat, Smick, and several other neighbors of Mosher sued him in Kootenai County Case No. CV28-19-6230 and asserted specific claims related to Mosher's grandfathered dock. The grandfathered dock to which Mosher succeeded from Barber is 1,008+/- square feet in size and predates the Lake Protection Act. Mosher's neighbors, including Third-Party Defendants Smick and Steamboat, claimed that the grandfathered Barber encroachment was located within the ten foot setback from the common Steamboat/Mosher littoral line. Mosher's neighbors, including the Third-Party Defendants, alleged that Mosher had replaced the grandfathered Barber dock (as opposed to conducting administratively defined "repair" activity) and that IDL should require Mosher to obtain a new permit for a 700 square foot dock set back at least ten feet from the parties' common littoral line.

In the neighbor's Second Amended Complaint: they sought damages, injunctive, and affirmative relief regarding Mosher's dock by alleging:

86. Based upon information and belief, the newly redeveloped and replaced residential dock that Mosher has moored to the Lake lot unlawfully interferes with and impacts the riparian rights of the Plaintiffs and impacts the historical line of navigability associated with [Steamboat Bay's] Community Lot.

87. The Plaintiffs are entitled [to] entry of an order permanently enjoining Mosher from mooring or otherwise connecting the dock or other structure to the Lake lot shoreline that materially interferes with or otherwise harms any riparian right associated with the Community Lot.

Id. at pp.86-87.

The Plaintiffs further sought "a judicial declaration regarding the respective rights and obligations of the parties ... as it relates to" Steamboat's lot (adjacent to the Mosher property) and the parties' respective riparian rights and Mosher's dock. *Id.* at p. 14 (¶¶90). To state that Mosher's dock and riparian rights were not at issue in the prior lawsuit (Kootenai County Case No. CV28-19-6230) is simply inaccurate.

Mem. In Opp. to Mot. to Strike 12-13. Mosher additionally argues that:

IRCP 14(a)(l) allows a Defendant to file a third-party complaint against a nonparty "who is or may be liable to it for all or part of the claims against it." IDL seeks relief in various forms, including an order directing Mosher to remove his grandfathered encroachment and to make application for a new dock compliant with contemporary (post January 1, 1975) LPA standards. Those standards would require that Mosher's dock, as the Third-Party Defendants know full well, be located ten feet away from the location the dock has occupied for over 50 years. Idaho Code §58- 1312 requires a permit or replacement of a grandfathered dock under current standards. Current standards provide for a maximum size of 700 square feet (IDAPA 20.03.04.015.01 .b.) and a set back from common riparian lines of ten feet (IDAPA 20.03.04.015.13.e.). By continuing to urge revocation of Mosher's existing encroachment, in violation of the Mediated Settlement Agreement, to effectively downsize and move Mosher's dock, the Third-Party Defendants are advocating a claim that is "part of the claim" against Mosher by IDL.

Moreover, IDL is seeking penalties and attorney fees from Mosher based upon action taken by IDL at the dogged insistence of the Third-Party Defendants notwithstanding the Third-Party Defendants' settlement of the underlying claims. Mosher is entitled to recover any penalties and attorney fees incurred in the defense of this action as a consequential damage of the Third-Party Defendants' breach of the terms of the Mediated Settlement Agreement and the implied covenant of good faith and fair dealing.

Id. at 15. Further, Mosher argues that:

First, the Third-Party Defendants "may be liable to [Mosher] for all or part of the Plaintiffs's [sic] claims." IDL seeks to make Mosher permit a new dock ten feet further away from the existing dock because of alleged infringement with the riparian rights of the Association. Yet the Association, having previously made that claim in its own right, stipulated to a dismissal of the same with prejudice.

Id. at 16. Mosher additionally argues that the Third-Party Defendant's breached the Mediated Settlement Agreement, and with such breach, additionally breached the implied covenant of good faith and fair dealing. *Id.*

Idaho Rule of Civil Procedure 14(a) states that a “defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it.” I.R.C.P. 14(a).

As cited by the State,

[The third-party claim] cannot simply be an independent or related claim but must be based upon plaintiff's claim against defendant. The crucial characteristic of a Rule 14 claim is that defendant is attempting to transfer to the third-party defendant the liability asserted against him by the original plaintiff. The mere fact that the alleged third-party claim arises from the same transaction or set of facts as the original claim is not enough.

Mem. in Supp. of Mot. to Strike, at 3, citing *Harris v. Rasmussen*, 106 Idaho 322, 324 106 Idaho 114, 116 (Ct. App. 1984), in turn citing 6 C. WRIGHT and A. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 1446 at 256–57 (1971).

In the case at hand, Mosher has brought against Steamboat Bay and Smick a claim for breach of contract and a claim alleging the breach of the implied covenant of good faith and fair dealing. The liability, in part, that Mosher is trying to transfer to the third-party defendants Steamboat Bay and Smick is that the State initiated this lawsuit based upon the “dogged instance of the Third-Party Defendants notwithstanding the Third-Party Defendants' settlement of the underlying claims.” Memo. In Opp. to Mot. to Strike at 15. Even if that is true, there is no scenario where Steamboat Bay and/or Smick would be liable for all or any part of the claim that State has against Mosher. The State's first requested relief against Mosher is for a restraining order against Mosher for encroaching on the beds or waters of the lake (Compl., 18, ¶ 1), and there is no way Steamboat Bay and Smick could be liable to Mosher for that. The second requested relief is for Mosher to restore the lake to its prior condition (*Id.* 18, ¶2) and there is no way Steamboat Bay and Smick could be liable to Mosher for that. The third

requested relief is for a civil penalty against Mosher for violating I.C. § 58-1308(1) (*Id.* 18, ¶3) and there is no way Steamboat Bay and Smick could be liable to Mosher for that. The fourth requested relief is for the State's expenses, costs and attorney fees for enforcing the Idaho Lake Protection Act (*Id.* ¶3, this is in error, there are two paragraphs three) and there is no way Steamboat Bay and Smick could be liable to Mosher for that. Mosher claims, "Mosher is entitled to recover any penalties and attorney fees incurred in the defense of this action as a consequential damage of the Third-Party Defendants' breach of the terms of the Mediated Settlement Agreement and the implied covenant of good faith and fair dealing." *Memo. In Opp. to Mot. to Strike* at 15. There is no basis to that claim by Mosher. The true reason Steamboat Bay and Smick cannot be liable to Mosher if Mosher is liable to the State, is a **lack of causation**. Neither Steamboat Bay nor Smick constructed Mosher's dock in its current location, in its current size, or via the method of "repairing" the prior dock. Only Mosher did those things. If Mosher is liable to the State for violating the Lake Protection Act, Mosher cannot look to Steamboat Bay or Smick because neither Steamboat Bay nor Smick **caused** Mosher to violate the Lake Protection Act. This is true even if Steamboat Bay and Smick violated the Mediated Settlement Agreement and even if Steamboat Bay and Smick directly caused the State to file its lawsuit against Mosher. The bottom line is neither Steamboat Bay nor Smick built Mosher's dock.

Mosher does not claim that either Steamboat Bay nor Smick would be liable to the State for the encroachment, but instead argues that Steamboat Bay's and/or Smick's breach of the Mediated Settlement Agreement, in part, caused the State to file this lawsuit against Mosher. Even if that were true, the Court does not find any

legitimate claim made by Mosher that would properly transfer the liability of the State's claim to either Steamboat Bay or Smick.

Mosher also argues, "By continuing to urge revocation of Mosher's existing encroachment, in violation of the Mediated Settlement Agreement, to effectively downsize and move Mosher's dock, the Third-Party Defendants are advocating a claim that is "part of the claim" against Mosher by IDL." *Id.* at 15. Just because there is an alignment of the claims does not cause I.R.C.P. 14 to be satisfied by Mosher. Idaho Rule of Civil Procedure 14 does not speak in terms of alignment of claims, it requires Steamboat Bay and/or Smick to be liable (or possibly be liable) to Mosher for all or part of the claims made by the State against Mosher. I.R.C.P. 14(a)(1). Mosher fails that requirement.

The Court is not being asked today to rule on whether Steamboat Bay or Smick breached the Mediated Settlement Agreement. Instead, the Court is being asked if Steamboat Bay and Smick did breach the Mediated Settlement Agreement, would Steamboat Bay and Smick be liable, or possibly be liable, to Mosher for the State's claims against Mosher. The answer to that question is "no", resulting in the dismissal of Mosher's Third-party Complaint.

While the Court has determined Mosher's Third-Party Complaint cannot exist in this present lawsuit, the Court finds that Mosher has stated a claim against Steamboat Bay and Smick. Accordingly, the Court finds that the appropriate remedy under I.R.C.P. 14(a)(4) is to strike the Third-Party Complaint from this lawsuit, and also sever such Third-Party Complaint such that it can be filed by Mosher as a plaintiff against Steamboat Bay and Smick as defendants, in a separate lawsuit, should Mosher decide to file such. Mosher essentially agrees with this alternative remedy, as Mosher argues:

Moreover, dismissal of the claim isn't the proper remedy even if IDL's substantive or procedural arguments have merit. The appropriate result would be to sever Mosher's Third-Party Claim into a separate action. However, such a severance would potentially prejudice Mosher.

Mem. In Opp. to Mot. To Strike 16. The “prejudice” alleged by Mosher is as follows:

Specifically, given that Steamboat Bay asserts a riparian setback right of ten feet on its common riparian boundary with Mosher (despite dismissing the claim), and if Steamboat Bay is not made a party to this litigation, then Mosher's rights could be prejudiced by entry of potential relief in favor of IDL that does not acknowledge the rights heretofore waived by Steamboat or Mosher's neighbors. What if this Court sides with IDL, despite the legal authority to the contrary, and orders the revocation of Mosher's permit and the submittal of a new permit request? IDL will claim that Mosher's neighbors have standing to assert a required setback of ten feet from the common riparian property line because that issue wasn't adjudicated in this proceeding with IDL. It might not even be surprising in that instance to have IDL subsequently tell Mosher that he should have adjudicated the claim in the pending proceeding.

Id. at 16-17. Mosher's claim of prejudice is built on several layers of speculation. More importantly, Mosher's claim of prejudice built on speculative claims of inconsistent judgments is unavailing because the potential for inconsistent judgments is not the test under I.R.C.P. 14. As just stated above, Idaho Rule of Civil Procedure 14 requires Steamboat Bay and/or Smick to be liable (or possibly be liable) to Mosher for all or part of the claims made by the State against Mosher. I.R.C.P. 14(a)(1). That rule is silent as to the possibility of inconsistent judgments. This Court finds Mosher has not articulated any reason why severance of Mosher's claims against Steamboat Bay and Smick is not the appropriate outcome.

IV. CONCLUSION AND ORDER.

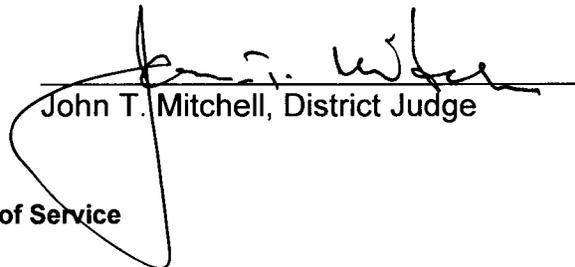
Based on the foregoing, the plaintiff State of Idaho's Motion to Strike Third-Party Complaint (in which third party defendants Steamboat Bay and Smick joined) is granted.

IT IS FURTHER ORDERED that the plaintiff State of Idaho's Motion to Strike Third-Party Complaint (in which third party defendants Steamboat Bay and Smick joined) is GRANTED.

IT IS FURTHER ORDERED that defendant Mosher's Third-Party Complaint is stricken in this lawsuit and that the Third Party Defendants Smick and Steamboat Bay are DISMISSED from this lawsuit.

IT IS FURTHER ORDERED that defendant Mosher's Third-Party Complaint is SEVERED and may form the basis of a new, separate lawsuit, should defendant Mosher elect to file such.

Entered this 24th day of October, 2022.



John T. Mitchell, District Judge

Certificate of Service

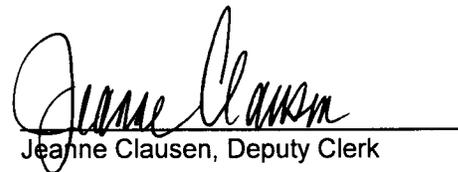
I certify that on the 24th day of October, 2022, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer
Angela Kaufmann
John F. Magnuson

email
angela.kaufmann@ag.idaho.gov ✓
john@magnusononline.com ✓

Lawyer
J. J. Winters
Michael L. Haman

email
jj.winters@ag.idaho.gov ✓
mlhaman.law@gmail.com ✓



Jeanne Clausen, Deputy Clerk